IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
WEDNESDAY, THE TWENTY THIRD DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE
and
THE HON'BLE MS JUSTICE G.ROHINI

WRIT APPEAL NO : 887 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 1-4-2004 in W.P. No. 21356of 2003 on the file of the High Court.)

Between:
A.V.N.Sriharsha, S/o A.V.N.V.S. Bipin Kumar,
residing at D.No.54-20-73, K.D.G.O.Colony, Vijayawada, Krishna Dist. being
minor rep. by his father and natural guardian Sri A.V.N.S. Bipin Kumar,
S/o.Srihari aged 57 years, resident of Vijayawada.

..... APPELLANT

AND

1 N.T.R. University of Health Sciences, Vijayawada, rep. by its Registrar.
2 The Chairman, Under graduate Admission Committee, NTR University of
Health sciences, Vijayawada, Krishna Dist.

.....RESPONDENT(S)

For the Appellant: MR. O.MANOHER REDDY

For the Respondents: Smt. Y. Padmavathi, S.C. for N.T.R. University

The Court Made the Following Judgment :

(Per Sri Devinder Gupta, CJ)

Appellant is a candidate seeking admission into M.B.B.S. course in N.T.R. University of Health Sciences, Vijayawada, Krishna District under N.C.C. quota, pursuant to notification dated 29.8.2003. The last date for receipt of the applications was 17.9.2003 and appellant filed his application in time. Thereafter, appellant participated in the counselling which took place on 26.9.2003, but was not admitted. On 27.9.2003 he made a representation and as there was no favourable response, petitioner approached this Court on 29.9.2003 by filing W.P. No.21356 of 2003 questioning the action of the respondents in not admitting him into MBBS course and for a consequential direction against the University for admitting him into the said course . The writ petition was filed before the admissions were over. The writ petition could not be taken up on 30.9.2003 and it was taken up on 1.10.2003, on which date while ordering Notice before admission, this Court passed interim order directing that admissions made under the NCC quota will be subject to the result of the writ petition. No counter was filed by the University. The writ petition was taken up for hearing on 1st April, 2004. Learned single judge proceeded to dismiss the writ petition relying on the decision of the Supreme Court in MEDICAL COUNCIL OF INDIA vs. MADHU SINGH ([1]) wherein it was held that once admissions were closed, no directions can be issued for admitting a candidate into 1st year MBBS course the appellant/petitioner into the 1st year MBBS Course and for that reason, learned single held that no Mandamus can be issued directing the respondents to admit the appellant petitioner into first year MBBS course under N.C.C. category in Andhra University Area.

Learned counsel for the appellant has placed reliance upon the decision of the Three Judge Bench of Supreme court in PUNAB ENGINEERING COLLEGE vs. SANJAY GULATI & OTHERS ([2]), RAJIV

KAPUR & OTHERS vs. STATE OF HARYANA & OTHERS ([3]), whereas the learned Standing counsel for the respondents has in addition to the decision relied upon by the learned counsel for the appellant has referred to the decisions of the supreme Court in SHAFALI NANDANI vs. STATE OF HARYANA & OTHERS ([4]), NEELU ARORA vs. UNION OF INDIA & OTHERS ([5]), and SUPREET BATRA & OTHERS VS. UNION OFINDIA ([6]). Learned Standing counsel for the respondents submits that the directions as prayed for by the appellant cannot be issued in view of the decision of the Supreme Court whereas the learned counsel for the appellant submits that when the Court would come to the conclusion that admission had illegally been denied to the appellant, it would not deny the relief sought by him. He further submits the appellant had approached the Court before admissions are over and before the admission process commenced, there was an order passed by the Court directing that admissions will be subject to the result of writ petition. In these circumstances, in view of what has been held by the Supreme Court in Punjab Engineering College case cited (supra-2), it is a fit case for issuing appropriate directions since the decisions in later cases will not apply to such cases.

We have given our due consideration to the submissions made at the Bar. As of today, it cannot be said that admission was or was not denied to the appellant/petitioner illegally or unlawfully by the respondent University. It can only be found after counter is filed by the respondent-University. As a matter of fact, learned single judge ought to have obtained counter of the respondent-University on record and then examined the question whether the petitioner was or was not entitled for the relief. Had he come to the conclusion that petitioner otherwise is entitled for the relief only, the eventual question would have arisen whether mandamus deserves to be issued or not in view of the decision of the Supreme Court in Madhu singh's case cited supra-1.

The writ petition could not have been dismissed in a mechanical manner merely on the ground that since admissions are over, no mandamus can be issued. Obviously, a candidate would approach the Court who was denied admission after exhausting his remedies and in the instant case, appellant approached the Court even before the admissions are over. Had the University filed its counter promptly, there was no reason why the question could not have been examined by the Court properly whether it was a fit case for granting any relief. The delay occurred because of the non-filing of the counter by the University, which should not come in the way of the petitioner getting adjudication on the question raised in the writ petition.

In that view of the matter, the impugned order deserves to be set aside. We, accordingly, allow the writ appeal and set aside the impugned order. Learned Standing Counsel for the University assures that counter will be filed within a week before the learned single judge. Learned single judge, thereafter will take up the writ petition for consideration in accordance with law. Parties to appear before the learned single judge on 2.7.2004.

DEVINDER GUPTA,CJ

Date: 23rd June, 2004

G. ROHINI,J

Pnb

To

1 The Registrar, N.T.R. University of Health Sciences, Vijayawada,.
2 The Chairman, Under graduate Admission Committee, NTR University of
Health sciences, Vijayawada, Krishna Dist.
3. Two C.D. copies.

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[1] 2002 (7) SCC 258
[2] AIR 1983 SC 581
[3] AIR 2000 SC 1476
[4] 2002(8) SCC 152
[5] 2003(3) SCC 366
[6] 2003(3) SCC 370